

FCC MAIL SECTION

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Before the
Federal Communications Commission
Washington, D.C. 20554

DISPATCHED BY

MM Docket No. 95-43

In the Matter of

Amendment of Section 73.202(b), RM-8580
Table of Allotments,
FM Broadcast Stations.
(Grand Junction, Colorado)

NOTICE OF PROPOSED RULE MAKING

Adopted: April 3, 1995;

Released: April 14, 1995

Comment Date: June 5, 1995

Reply Comment Date: June 20, 1995

By the Chief, Allocations Branch:

1. The Commission considers herein a petition for rule making filed on behalf of Grand Valley Public Radio Company, Inc. ("petitioner"), permittee of noncommercial educational Station KAFM(FM), Channel 201A, Grand Junction, Colorado, requesting the allotment of Channel 264C1 to Grand Junction and modification of its authorization accordingly.

2. In support of its proposal petitioner advises that it is presently authorized by the terms of its construction permit to operate Station KAFM(FM) on Channel 201A with low power (0.016 kilowatts). Further, petitioner advises that it is constrained from increasing its facilities within the noncommercial reserved portion of the FM band due to the existence of other noncommercial stations operating therein. Therefore, in order to improve the service Station KAFM(FM) provides to Grand Junction, petitioner requests the allotment of Channel 264C1 to that community for its use.¹ Although petitioner does not specifically request that Channel 264C1 be designated as a "reserved" channel limited solely to noncommercial operation, it states its intention to continue offering such service to the community, regardless of the manner in which Channel 264C1 may be allotted. Petitioner also advises that in the event other expressions of interest in providing Grand Junction with service are received, two Class C channels are also available to the community. Therefore, petitioner requests that its authorization be modified to specify Channel 264C1, whether the channel is reserved or not.

3. Although petitioner has not specifically requested that Channel 264C1 be reserved for noncommercial educational use, commercial channels are generally not reserved for such use in allotment proceedings, except where channels in the reserved portion of the FM band (Channels 201-220) are unavailable due to VHF television Channel 6 interfer-

ence, or are precluded due to the presence of Canadian or Mexican allotments. *See generally, Butte, Montana*, 9 FCC Rcd 2180 (1994); *Buhl, Minnesota*, 9 FCC Rcd 2606 (1994). Petitioner has not demonstrated that either of the two exceptions to the Commission's policy exists in this instance to enable it to be modified to specify operation on Channel 264C1.

4. In view of the above, we will propose to allot Channel 264C1 to Grand Junction since an interest has been expressed in providing an additional wider coverage area service to the community. However, since Channel 264C1 is not an equivalent class channel to Channel 201A, and the channels are not mutually exclusive, petitioner's present authorization cannot be modified to specify operation on the commercial channel. Moreover, the proposed allotment of Channel 264C1 would not fall within any established exception to the Commission's Rules that new allotments must be made available for general application. Therefore, in the event Channel 264C1 is ultimately allotted to Grand Junction, petitioner may submit an application therefor specifying noncommercial educational programming.

5. Accordingly, we will solicit comments on the proposed amendment to the FM Table of Allotments, Section 73.207(b) of the Commission's Rules, with respect to Grand Junction, Colorado, as follows:

City	Channel No.	
	Present	Proposed
Grand Junction, Colorado	222C,226C, 282C,300C	222C,226C, 264C1,282C,300C

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **June 5, 1995**, and reply comments on or before **June 20, 1995**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Harry F. Cole, Esq.
Bechtel & Cole, Chartered
1901 L Street, N.W.
Suite 250
Washington, D.C. 20036

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's

¹ According to Commission records, in addition to Station KAFM, Grand Junction is also served locally by noncommercial

educational FM Stations KCIC (Channel 203A), KPRN (Channel 208C1), KJOL (Channel 212C3) and KMSA (Channel 217A).

Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cui-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in

reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.